

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
A La Carte and Themed Tier Programming)	MB Docket No. 04-207
and Pricing Options for Programming)	
Distribution on Cable Television and Direct)	
Broadcast Satellite Systems)	

COMMENTS OF GSN - THE NETWORK FOR GAMES

GSN - the network for games (“GSN”), formerly known as Game Show Network, submits these comments in response to the Commission’s Public Notice, DA 04-1454, released May 25, 2004, concerning the provision of a la carte and “themed-tier” services on cable television and direct broadcast satellite systems. Requiring cable operators and other multichannel video program distributors (“MVPDs”) to offer a la carte programming in addition to or in lieu of tiered service packages is no more likely to lead to consumer savings or other significant consumer benefits than requiring a newspaper publisher to distribute separate publications of the comics, editorial page, sports, local news, national news, entertainment and financial sections.

A. The GSN Programming Service Is Predicated on Broad Distribution.

GSN is the only United States television network dedicated to games, game-related programming and interactive game playing. The network features game shows, reality games, documentaries about competition, card game shows and other programs. GSN offers innovative and family-friendly original programming such as Lingo, a word game; Whammy, the all-new version of Press Your Luck; Friend or Foe, a team trivia game, with a twist; and American Dream Derby, a reality game for those who dream of owning thoroughbred race

horses. GSN is distributed in the United States by all major cable operators and satellite providers and reaches approximately 55 million Nielsen television homes. It is owned by Sony Pictures Entertainment and Liberty Media Corporation.

GSN was planned, developed, financed and marketed as one component of broad-based packages of services provided by MVPDs to their subscribers -- not as a stand-alone service. It is usually carried on the expanded basic tier, along with news, financial, sports and other entertainment services. The exposure obtained by GSN through carriage in these packages has helped it to gain a foothold in the marketplace and to begin developing a brand identity. As the Commission recently stated, “[b]undling programming channels into packages allows greater penetration of individual channels which lowers the per subscriber price MVPDs pay to programmers and benefits new or niche channels through subscriber awareness that is necessary for the survival of such new programming, especially when it is not associated with a ‘brand name entity.’” See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming (Tenth Annual Report), 19 FCC Rcd. 1606 (2004) (“Tenth Video Competition Report”) at ¶173.

Any government program that would require or promote a la carte carriage or mini-tiers at the expense of broad packages of networks would fundamentally change the economic foundation of programming networks like GSN. Such networks would lose significant distribution -- and the license fees and advertising revenues that go with it -- as a result of a la carte carriage or mini-tiers. At the same time, GSN would face substantial increases in marketing and other operating costs, making it extremely difficult for GSN (and other advertiser supported programming services) to survive a transition to an a la carte carriage world.

B. The Current Programming Marketplace Demands Broad Distribution.

Today's video marketplace is vastly different from the market five or six years ago, when the Commission concluded that an advertiser-supported cable programming network could survive with only 15 to 20 million subscribers. See, e.g., Implementation of Section 11(c) of the Cable Television Consumer Protection and Competition Act of 1992, 14 FCC Rcd. 19098 (1999) at ¶¶40-41; Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming, 13 FCC Rcd. 24284 (1998) ("Fifth Video Competition Report") at ¶152. The vast majority of cable systems then had less than 54 channels, and there were fewer than 150 national non-premium programming networks. See Fifth Video Competition Report at Tables B-3 and B-5. Although the top-ranked non-premium network had nearly 75 million subscribers, more than 20 of the top 50 non-premium program networks had fewer than 50 million subscribers. Id. at Table D-6. In fact, the Commission reported that GSN ranked 50th among non-premium programmers in 1998 with only 14.5 million subscribers. Id.

The current video marketplace is vastly different. "Today...cable operators offer, on average, 70 analog video channels, 120 digital video channels, high-definition television programming, video-on-demand, and non-video services..." Tenth Video Competition Report at ¶18. Each of the top 25 non-premium programming networks now has more than 80 million subscribers. Id. at Tables C-5 and C-6. According to recent Nielsen Universe Estimates of programming network distribution, the 50th-ranked program service today is National Geographic Channel, which has more than 50 million subscribers. Thus, the notion that an advertiser-supported cable programming network can survive in today's world with only 15 to 20 million subscribers is long out of date. A stand-alone network (i.e. one that is not affiliated with a broadcast network or a major cable multiple system operator) has virtually no chance to

gain significant advertising revenue with only 15 to 20 million subscribers. A network needs at least 25 million subscribers just to be included in the Nielsen ratings, and, at that level, any ratings data are likely to be subsumed within Nielsen's margin of error. While a few advertisers might be willing to take a chance on a new programming network, it is all but impossible to sell meaningful national advertising at that subscribership level.

Currently, 50 million subscribers is the approximate threshold for achieving meaningful national advertising revenues, a level of distribution which GSN's experience demonstrably confirms. Between 2002 and 2003, GSN increased its distribution from 43 million subscribers to over 50 million, an increase of approximately 16 percent. During that same period, however, GSN's general rate advertising revenues more than doubled, and they are on track to double again this year. The number of national advertisers buying time on GSN also increased substantially -- nearly doubling during the period after GSN passed the 50 million subscriber mark. GSN continues to plow these revenues back into the acquisition and development of new programming to improve its service and gain additional distribution, as well as community outreach programs like GSN's "Get Schooled" game tour, through which hundreds of thousands of dollars have been contributed to the college savings funds of students in 15 to 20 different cities. Even at the 50 million subscriber level, a network must be able to demonstrate that its distribution is growing, and advertisers will quickly abandon a network that is losing distribution. Many advertisers will not even meet with a network that has less than 50 million subscribers. The only way to achieve and exceed these levels of distribution is through popular and widely-distributed service tiers.

The Commission's own reports confirm that carriage in program packages is essential to reach the 50 million subscriber threshold. HBO is the most widely recognized and

popular premium programming service. It has been in existence for more than 30 years and is part of one of the largest entertainment and programming conglomerates in the world, Time Warner. Yet HBO has less than 40 million subscribers including all of its related services (HBO, HBO Latino, HBO Plus, HBO Signature, HBO Comedy, HBO Family, HBO Zone, and Cinemax, 5 Star Max, [@] Max, MoreMax, ActionMax, Outer Max, Thriller Max and W Max). See Tenth Video Competition Report at Tables C-1 and C-5, n. 4.¹ If the best known, oldest and most highly-penetrated a la carte programmer has been unable to reach 50 million subscribers over its 30-year existence, what chance is there for smaller niche programmers to reach that level of distribution on a la carte basis? GSN's distribution to 55 million homes -- and the substantial increase in advertising revenues associated with that distribution -- would only be a distant memory in an a la carte world. The loss of advertising revenues resulting from mini-tier or a la carte carriage would be real, immediate, and very substantial.

C. Reduced Revenues and Higher Costs Would Imperil Many Programmers.

The objectives of any government program to promote a la carte carriage or mini-tiers should be to provide greater real choices and reasonable cable rates for consumers. Unfortunately, mandatory a la carte or mini-tier carriage would result in exactly the opposite.

1. Increased License Fees Would Be Passed On To Subscribers.

As set forth above, there can be no dispute that moving programming services like GSN from broad service tiers to a la carte carriage or mini-tiers would reduce distribution of those services. Unless the programmers increased per subscriber license fees charged to distributors, programmers would suffer a net loss in license fee revenues as a result of reduced

¹ Other programming services that began as a la carte offerings, including Disney and Bravo eventually abandoned that distribution format in favor of carriage on broad service tiers. *Id.* at ¶173; see also Raymond Lee Katz, et al. Bear Stearns, "A La Smart?" (March 29, 2004) at 4 (every regional sports network that began as a pay service has changed to tiered carriage and advertiser support).

distribution. Because distributors would not be able to absorb the license fee increase -- not only for GSN, but also for every other programming service that is shifted from basic or expanded basic tiers to a la carte carriage or mini-tiers -- some or all of the increase in license fees would be passed on to subscribers.

In addition to compensating for reduced distribution, license fees would increase still more to compensate for lost advertising revenues. Currently, services with low license fees, such as GSN, derive a substantial portion of their overall revenues through advertising. Reduced distribution through a la carte carriage or mini-tiers unquestionably would have an adverse effect on the programmer's advertising revenues. See, e.g., United States General Accounting Office, "Telecommunications: Issues Related to Competition and Subscriber Rates in the Cable Television Industry," Report No. GAO-04-8 (rel. Oct. 24, 2003) ("GAO Report") at 35 (because "advertisers will pay more to place an advertisement on a network that will be viewed, or have the potential to be viewed, by the greatest number of people...any movement of networks from the most widely distributed tiers to an a la carte format could result in a reduced amount that advertisers are willing to pay for advertising time because there would be a reduction in the number of viewers available to watch the networks."). The unavoidable and dramatic loss in advertising revenues caused by a la carte carriage would of necessity cause GSN to significantly increase its license fees.

The primary beneficiaries of any Commission-sponsored move toward a la carte carriage or mini-tiers would be broadcast networks and their affiliated programmers. Pursuant to the must-carry provisions of the Communications Act and the Commission's regulations, broadcasters are guaranteed carriage on the basic service tier to which all cable customers are required to subscribe. Pursuant to retransmission consent, broadcasters often are able to

negotiate similar favorable carriage terms on behalf of their affiliated programmers. As a result, while independent programmers like GSN would lose distribution through mandatory a la carte carriage and mini-tiers, broadcasters would be able to assure advertisers that every cable subscriber would have access to their advertisements. The advertising market would be skewed again in favor of broadcasters and their affiliated programmers -- just as many cable programming networks are beginning to compete with them for national advertising revenues.

2. Programmers Would Face Increased Marketing and Other Costs.

As license fee and advertising revenues decreased, programmers like GSN, that are not affiliated with broadcast networks or other universally distributed and branded cable networks, would face increasing costs as a result of a la carte carriage or mini-tiers. GSN already has incurred fixed program acquisition and production costs that would not decrease as a result of reduced distribution. Thus, per-subscriber programming costs necessarily would increase.

GSN also would face significant increases in marketing costs in order to try to sell its service directly to individual viewers. Currently, GSN focuses its consumer marketing on those areas in which it has broad distribution, engaging in so-called “tune-in” advertising directed toward existing subscribers. If relocated to a la carte carriage or mini-tiers, GSN would have to engage not only in such “tune-in” advertising to existing subscribers, but also would have to embark on never-ending mass-marketing campaigns similar to those undertaken by premium movie services like HBO, Showtime and Starz Encore, focused on acquiring subscribers. GSN simply does not have the resources to conduct such mass marketing campaigns. Based on publicly reported information, HBO’s expenditures on mass media advertising in 2003 far exceeded GSN’s total advertising revenues. In addition, GSN would

have to expand dramatically its joint marketing strategies with distributors and incentive packages and training for their customer service representatives in order to motivate them to sell the GSN service. Even if GSN had the resources to triple its consumer media spending and consumer creative advertising budgets overnight, we believe that GSN would not survive a transition to a la carte carriage or mini-tiers -- and we do not believe that GSN would be alone in that respect.²

D. Mandatory A La Carte Carriage Raises Serious Diversity and Constitutional Issues.

Rather than increasing viewer choice, mandatory a la carte carriage or mini-tiers would achieve the opposite result by substantially reducing diversity. Existing networks such as GSN would, in all likelihood, be forced eventually to exit the market. Clearly, the scores of programming services in development and now trying to launch would be abandoned.³ Faced with substantially lower license fee and advertising revenues and increased costs, surviving programmers necessarily would reduce their programming budgets which have fueled the production of original programming on non-broadcast television. The resulting financial pressures would likely yield further consolidation, with the broadcast network conglomerates using their established brands, unending cross-promotional opportunities, and financial wherewithal to acquire other programmers struggling as a result of conversion to a la carte carriage.

² At a minimum, conversion to mini-tier or a la carte carriage will dramatically affect employment in the programming industry as programmers look for ways to cut costs to compensate for their lost subscriber fees and advertising revenues.

³ If distributors were permitted to retain programming tiers, but also were required to provide the component programming services on an a la carte basis, MVPDs would be forced to duplicate program networks already distributed on analog tiers as digital a la carte services, wasting valuable bandwidth, which already is limiting the number of networks that MVPDs can distribute. Thus, a la carte distribution would reduce diversity through both its financial and technical impacts.

Finally, government-mandated a la carte carriage or mini-tiers would raise serious constitutional questions and arguably violate the first amendment, due process and equal protection rights of GSN and other programmers when: (a) statutory must-carry provisions guarantee that broadcasters would continue to reach all subscribers with their programming; (b) retransmission consent would provide broadcasters with additional rights used to ensure that their affiliated services will be carried on popular service tiers; (c) leased access and PEG programmers would continue to receive mandatory carriage on the basic service tier; (d) government-mandated a la carte carriage and mini-tiers would interfere with and potentially abrogate GSN's rights under its existing distribution agreements; and (e) such interference not only would abridge GSN's first amendment rights but also eliminate it as a first amendment speaker. There is no public interest, much less a compelling public interest benefit, that could conceivably support this kind of government intrusion into the video marketplace.

Conclusion

In addition to cable and satellite television, the American public is presented on a daily basis with a host of entertainment and information alternatives, including broadcast television, movies, DVDs, videotapes, the internet, radio, books, magazines and newspapers. Nevertheless, a substantial majority of American households choose to subscribe to cable or satellite television service, and those subscribers today have more network choices, offering more original and varied programming, than ever before. Viewers have endorsed the bundled programming packages and a la carte channels offered by all MVPDs -- ratings have steadily increased and millions of additional viewers have opted for cable or satellite television service each year. Advertising revenues have supplemented license fees so that programmers such as GSN may charge moderate fees and still invest millions of dollars annually in original

programming. In short, the marketplace is working. Government intervention in the form of mandatory a la carte carriage or mini-tiers would undermine the broad distribution upon which numerous programmers have built their networks. And for what? Viewers would pay more for fewer networks with scaled-back programming budgets. Media concentration would increase more rapidly and diversity would be lost. Distributors, programmers and viewers would all be losers.

Respectfully submitted,

GSN

By: /S/

Rich Cronin
President and Chief Executive Officer
GSN
2150 Colorado Avenue
Santa Monica, California 90404
(310) 255-6800

July 15, 2004